STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
REGARDING
H.R. 1749, THE PEST MANAGEMENT AND FIRE SUPPRESSION FLEXIBILITY ACT

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Presented by,
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Chairman Duncan, Ranking Member Johnson and members of the committee, thank you for the opportunity to speak to you today on behalf of American agriculture and for your attention to our concerns.

My name is Ed Flanagan. Today I represent Jasper Wyman & Sons blueberry farm in Maine, as president and CEO, as well as the nation's largest general farm and ranch organization, the American Farm Bureau Federation (AFBF), of which I am a grassroots member. I am pleased to present this testimony on behalf of hundreds of thousands of threatened farmers nationwide. Operating at all levels and scales of production, Farm Bureau members across the country and in Puerto Rico grow, raise and market crops, livestock and poultry, as well as forest and value-added products.

AFBF joins with other grower groups in strongly supporting and urging Congress' immediate passage of H.R. 1749, the "Pest Management and Fire Suppression Flexibility Act." Farmers and ranchers rely on the reasonable use and ready availability of affordable, safe pesticides and pest management tools. We believe it is fundamentally wrong and inconsistent with congressional intent, to blur the line between historical non-point source activities such as the label-approved application of pesticides and point source discharges justifying federal permits.

Background
In 1972, Congress enacted the Clean Water Act (CWA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). CWA authorized the Environmental Protection Agency (EPA) to protect the nation's waterways by regulating discharges of large industrial operations and wastewater facilities through the National Pollutant Discharge Elimination System (NPDES). FIFRA provided the EPA with the authority to regulate the sale and use of pesticides through a comprehensive registration and labeling protocol.

Until recent court decisions, the application of agricultural and other pesticides in full compliance with labeling requirements did not require NPDES permits. Because pesticides undergo lengthy testing under FIFRA, including tests to ensure water quality and aquatic species preservation, a NPDES permit was considered unnecessary and duplicative.

The cases include:

- 2001 – Headwaters, Inc vs. Talent Irrigation District – The court ruled that an irrigation district applying a pesticide into an irrigation canal according to label directions was in violation of the CWA because it did not have a NPDES permit.
- 2002 – League of Wilderness Defenders vs. Forsgren – The court greatly narrowed a longstanding EPA rule that exempted pest and fire control and other forestry activities.

Similar cases are pending. Groups are now using the notice of intent to sue to intimidate farmers, mosquito abatement districts and federal and state agencies into stopping or reducing West Nile virus prevention and crop loss and rangeland protection operations.

In February 2005, EPA responded to the court cases by issuing a proposed rule that reiterated that an NPDES permit is not required when a pesticide is applied, consistent with its label, to, near or over a waterway. While this proposal is helpful, it does not fix the problem for pesticide users; only Congress can affirmatively clarify the law for the courts.

The EPA rule is a step in the right direction, but it does not go far enough because it is not fully consistent with the agency's longstanding policy that the application of agricultural and other pesticides, in accordance with their label, does not require an NPDES permit. Moreover, the rule does not protect farmers, irrigators, mosquito abatement districts, fire fighters, federal and state agencies, pest control operators or foresters vulnerable to citizens' suits, simply for performing long-practiced, expressly approved and already heavily regulated pest management and public health protection activities.

In order to provide a graphic example of why Farm Bureau supports H.R. 1749, here is my personal story of the magnitude of the negative impacts imposed by applying CWA permit requirements to FIFRA compliant pesticide applications.

Wyman's Story

Jasper Wyman & Son, a Maine company founded in 1874 and still owned by the Wyman family, is a fully integrated-grower, processor, marketer-wild blueberry concern. Twenty to 25 percent of Maine's crop is grown on Wyman's land and about 33 percent of Maine's crop is processed and marketed by Wyman's. We also grow and process cranberries. While we are an operation of significant size and scale, comparatively our approximately $40 million in total sales makes us a small company among our competitors within the global food distribution and marketing chain.

Market Realities

Farming the world over is a challenge and growing wild blueberries in Maine is no exception. Too much inventory, too little inventory; too much rain, too little rain; cold winters, wet springs, dry summers – all are risks of the business, and they are enough. For Maine blueberry growers, you must add to the list subsidized Canadian competition (our largest competitor has received $52 million in loans from the Nova Scotia government, including $10 million this spring for working capital. United States blueberry producers receive no such assistance). When compared to our Canadian competition, growers in Maine are at a competitive disadvantage for labor, energy and litigation costs, while also shouldering the costs of workmen's compensation and health benefit cost inflation. Despite these challenges, we continue our work. But we have our limits. A misguided attack on farming by the environmental community looms as a fatal competitive blow to Maine's blueberry industry and to agriculture nationally.

The Unique Growing Characteristics of Maine Wild Blueberries

Wild blueberries – also called "lowbush" – grow low to the ground. It takes two years to grow a crop, so while half of the land "crops," the other half bears sprouts for the following year. Maine's wild blueberries are "wild" because they have never been planted. They are derived from an indigenous root system that has thrived for thousands of years in the thin sandy, glacial soil of coastal Maine. In that way it resembles a mineral deposit as much as a crop. The vast fields of Washington County, where we are located, are called "the barrens" because the glacial character of the soil makes it relatively infertile for all but alders, scrub growth, weeds and wild blueberries. Wyman's is fortunate that a commercial crop can be realized on such ground.

Due to the nature of the soil, wild blueberry growers became early practitioners of sustainability. For example, post harvest, fields are mostly mowed (some burning occurs on rockier fields) with the organic mulch left to assist the soil.

Wild Blueberries and Crop Protection

Wild blueberries are <u>not</u> considered to be a <u>high chemical-use crop</u>. The fruit has natural disease-resistance due to its high acidity. However, weeds compete for nutrients and block efficient harvesting of fields so use of herbicides is imperative for commercial crop success. Pesticides are needed to control outbreaks of leaf eating caterpillars or fruit fly infestation that can reduce yield and fruit quality during May to August of the cropping year.

Further, because the plants grow quite close to the ground, wild blueberries are very susceptible to fungal diseases during the wet weather of early spring. Without the use of fungicides, a crop with two years of investment can be lost to blight in two weeks of wet weather in May unless the fields are quickly and efficiently treated.

The wild blueberry industry became early adopters of Integrated Crop/Pest Management (ICM/IPM). Using a field scouting system to monitor for pest and disease, growers are more selective and targeted in their use of crop protection chemicals. Using IPM, Wyman's and others in our industry have reduced our use of chemicals by over 80 percent.

To put it in perspective, over the course of the two year growing cycle, Wyman's fields receive 0.03 to 0.04 ounces (3 to 4 hundredths of an ounce) in total of chemicals per square foot. The fruit is then thoroughly washed and sanitized before freezing. For 2005, pesticide residual testing indicated the <u>highest</u> detection for any sampled residue was <u>40 times below</u> EPA's maximum allowable residue limit for that chemical.

Aerial Spraying

Like other businesses, blueberry growers and processors live in the communities where we operate. Despite the fact that growers are morally and financially motivated to carefully monitor their crop protection practices very carefully, public concerns and misunderstanding about aerial applications are nothing new.

When Wyman's used aerial application for crop protection, we employed on-the-ground scouts to monitor wind speeds and air inversions – we followed or exceeded the FIFRA label guidelines

for all our applications. The planes spray no more than 10 to 15 feet from the ground. The pilots are highly trained, dedicated and know careless application practices jeopardize their business livelihoods. Aerial application's most important advantage is that one licensed chemical handler can focus on handling and preparing chemicals for spraying as opposed to multiple people and equipment being responsible for mixing chemicals.

Wild blueberries do not grow in rows so ground-based "boom sprayers" with wheels automatically reduce crop yield by crushing plants. By using aerial application for treatment, Wyman's and other large-scale growers in our area provided the scale and coordination for aerial application services to justify offering services to smaller growers in the community. The activists' success at intimidating the our area's two largest growers (Wyman's and Cherryfield Foods) into not applying aerially also means a reduction in smaller growers access to this very effective, safe crop protection technique.

Exposure to Activist's Attacks
When the Atlantic salmon was declared an endangered species in the mid 1990's, the state of Maine worked with the agricultural community to document any influences on the rivers that were the salmon's traditional habitat. In 2000, Wyman Farm's voluntarily participated in a state Board of Pesticide Control (BPC) effort to establish a database measuring the level of chemical residues in nearby waterbodies during/after aerial spraying. The BPC published the monitoring results on its public web page. The monitoring revealed a small number of detections, at levels well below allowable legal limits. Detections ranged in value from 11/100's to 94/100ths of one part per *billion* and 3425 nanograms (i.e., a billionth of a gram). Wyman's and others believed these results to be positive news and further evidence of our careful stewardship of our land.

Unfortunately, activist groups issued 60-day notices of intent to sue first against Cherryfield Foods in October 2004, then five months later against Wymans. Activists alleged that the detections of pesticides in the water, regardless of amount or risk, amounted to a violation of the Clean Water Act. We now ask ourselves and everyone else, "if we can get sued for voluntarily working with government even when that cooperation shows compliance with the law, why would we or anyone ever voluntarily participate in any program to evaluate stewardship efforts?" The litigation exposure threatened by the activists contributes to skepticism in the agricultural community and totally undermines the spirit of cooperation that the government tries to encourage.

Our Conundrum
In late November of last year, prior to the activists officially filing their notice of intent to sue, Wyman's agreed to informally meet the groups and explain our practices in detail, especially our genuine belief that aerial spraying is safer and more precise than the alternative techniques. Apparently our discussion with the activists fell on deaf ears. On March 3, 2005, Wyman Farm's received the activists' 60-day notice of their intention to file suit against us unless we applied for an NPDES permit under the Clean Water Act to aerially apply pesticides. On the same day, the activists' attorney received a letter from the Maine Department of Environmental Protection that no such permit was legally required. In other words, Wyman's became the guinea pig in a precedent-setting lawsuit to gain control over legitimate agriculture practices.

By filing a citizen suit under the Clean Water Act, the activists could have their legal expenses paid by Wyman's if they prevailed. However, if Wyman's prevailed in the lawsuit, we could not pursue reimbursement for our legal expenses from the plaintiffs. Under such a scenario, how can folks like Wyman's ever really win? **In order to avoid a drawn out, costly lawsuit, our**

only option was to give in and get an NPDES permit that the state of Maine and EPA say we don't need?

Aware that the EPA was in the process of moving from an interpretive statement to a final rulemaking sometime later in 2005 and also aware that Congress was looking into the issue, Wyman's put its faith in the wisdom of the federal government and chose to avoid litigation by agreeing to stop aerially chemical applications until such time as the law was fully clarified for the courts. Wyman's leased two boom sprayers for ground applications to our land, and introduced our smaller growers to a helicopter service that was willing to step in to provide aerial spray services to replace the fixed wing aerial support we usually provided.

Consequences on the 2005 Crop
In 2004, Maine suffered the worst crop in 14 years at a time when demand for blueberries was booming. The 2005 crop had to be above average for the industry to sustain the demand momentum and maintain our market share.

This year's winter bud count was very good and we had a very wet May. A critical brief window of time is vital in order to apply two treatments on the fields to prevent blight on the plants. For Wyman's, some fields were too wet to bear the ground application equipment, but we managed to treat most fields with the ground applicators. In the case of Maine's 400 or so small growers, most could not afford the new costs for the helicopter application service, they did not have adequate "mist blowers," and most were overwhelmed by the challenges of managing crop protection without access to traditional aerial application. Basically, they hoped for a dry spring to control the threat of blight. But, the spring was wet and blight was the principal contributor to a crop disaster for small-scale growers: they suffered losses of up to 50 percent or more compared to prior years' yields.

Wyman's took in an average crop. We estimate that six to eight percent of our crop was lost to the wheels of the ground boom applicators – approximately one million pounds of wild blueberries with a wholesale value this year of $1.3 million. The loss to Wyman's small growers is estimated to be a farm gate revenue of over $3 million. In total, we estimate this year's farm gate losses from the altered pesticide applications within the wild blueberry industry in our area to be nearly $10 million.

Conclusion
A growing number of environmental activists have a relentless agenda – the ultimate elimination of pesticide use altogether regardless of benefits or safety. Their war against agriculture is based on the unfounded proposition that all man-made chemicals are harmful regardless of the care or quantity. Wyman's knows our consumers and our crops. If we believed that growing our blueberries without pesticides was safer and more commercially viable we would, but it is neither.

Historically, environmental laws like the CWA and FIFRA have served this country well. Our water and air are cleaner, our ecosystems are protected and we have the safest, most cost-efficient food supply in the world. But, I take it as a personal insult when I am portrayed as a

reckless polluter. Activists would like you to believe they know best and they alone care for the environment. The fact is, agricultural producers are the people who live closest to our natural resources. It is wrong and unfair for them to be threatened with lawsuits when they are actively working to protect our natural resources.

Now, environmental extremists are trying to maintain their political influence by holding American agriculture hostage. Congress owes it to American farmers and consumers to not leave us vulnerable to abuse of federal citizen suit privileges and coercion by litigation. Maine's wild blueberry growers' plight this year is evidence enough that Congress must take fast decisive action to clarify federal law and preserve a farmer's right and ability to reasonably provide a safe, affordable food supply.

On behalf of Wyman Farms, Maine blueberry growers and farmers throughout the nation, please pass the Pest Management and Fire Suppression Flexibility Act this year so that agriculture can get back to business without fear of blackmail.

Chairman Duncan, Ranking Member Johnson and members of the committee, thank you for listening to our story and for your time and attention to this very important problem. I'm happy to answer any questions you may have.

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